IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

Bail Appl..No. 3672 of 2007()

(CRIME NO. 165/2007 of PAYYANNUR POLICE STATION)

PETITIONERS

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1. MOHAMMED ASHRAF K.A.,
   S/O.MOOSAM HAJEE, AGED 39 YEARS,
   ETTIKULAM, RAMANTHALI AMSOM DESOM.

2. HAMZA C.P., AGED 43 YEARS,
   S/O.ABDUL RAHIMAN, RESIDING AT VADAKKUMBAD P.O
   VIA RAMANTHALI, TALIPARAMBA.

BY ADV. SRI.P.M.HABEEB

RESPONDENTS:

STATE OF KERALA,
REP.BY CIRCLE INSPECTOR OF POLICE,
PAYYANNUR POLICE STATION, THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. S.U. NAZER, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.3672 of 2007

Dated this the 19th day of June, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 1 and 2. They face allegations, inter alia, under Section 326 read with 149 I.P.C. The crux of the allegations is that the petitioners had trespassed into the property of the defacto complainant and attempted to construct a road towards the property of the 1st accused. When the defacto complainant objected, he was allegedly beaten with an iron rod resulting in fracture of the shoulder bone. The incident took place on 18.04.2007. F.I.R was registered on the same day. Names of the accused are shown in the F.I.R, though the Doctor in the wound certificate does not appear to have recorded the names of the assailants.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. On account of prior animosity, such false allegations have been raised. Petitioners are willing to co-operate with the Investigating Officer. Subject to appropriate conditions, anticipatory bail may be granted, it is prayed.

3. The application is opposed by the learned Public Prosecutor. The allegations are serious. The injuries suffered include a fracture. The weapon of offence has been recovered. There are no

circumstances justifying the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor.

4. I agree with the learned Public Prosecutor. I find merit in the opposition. I am not persuaded to agree that this is a fit case where directions under Section 438 Cr.P.C can or ought to be issued. This, I am satisfied, is a fit case where the petitioners must resort to the ordinary and regular procedure of appearing before the learned Magistrate or surrender before the Investigating Officer. They must then apply for bail in the regular course.

5. This Bail Application is, in these circumstances, dismissed. Needless to say that the petitioners shall be at liberty to surrender before the learned Magistrate and apply for bail. Their applications for bail will have to be considered in accordance with law and expeditiously.

(R.BASANT, JUDGE)

rtr/-